

## 21 C.J.S. Courts § 97

Corpus Juris Secundum | June 2023 Update

### Courts

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### II. Jurisdiction of Courts

#### J. Objections to Jurisdiction; Estoppel or Waiver of Objections

### § 97. Objections to personal jurisdiction—Waiver of personal jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Courts](#)  37(1)

**Personal jurisdiction may be waived by a party by the failure to raise the issue or object or by submission to the jurisdiction of the court in various ways.**

Provided the court has subject matter jurisdiction,<sup>1</sup> which cannot be waived,<sup>2</sup> personal jurisdiction may be conferred by a waiver of personal jurisdiction or the failure to object to a defect in personal jurisdiction.<sup>3</sup> A party may waive its objection to personal jurisdiction,<sup>4</sup> as by the failure to object,<sup>5</sup> the failure to timely object,<sup>6</sup> or the failure to raise the defense<sup>7</sup> or object in the proper manner.<sup>8</sup>

The inquiry whether a party has forfeited a defense predicated on a lack of personal jurisdiction is fact-sensitive, requiring a thorough assessment of the parties' conduct throughout the litigation; factors that could be relevant to such an inquiry may include: (1) the amount of time that has elapsed, as well as the changed procedural posture of the case, in the period between the party's initial and subsequent assertion of the defense, (2) the extent to which the party engaged in discovery on the merits, and (3) whether the party engaged in substantive pretrial motion practice or otherwise actively participated in the litigation.<sup>9</sup>

A waiver of personal jurisdiction may be accomplished by a variety of legal arrangements,<sup>10</sup> including consent, agreement, stipulation, or contract,<sup>11</sup> as well as by the party's particular acts in the litigation, such as making a general appearance in the action,<sup>12</sup> submitting to the jurisdiction of the court,<sup>13</sup> seeking a ruling on the merits,<sup>14</sup> seeking affirmative relief,<sup>15</sup> obtaining something of benefit by participating in the proceeding, or otherwise acting in a manner inconsistent with a claim that personal jurisdiction is lacking.<sup>16</sup>

A waiver of an objection to the court's personal jurisdiction applies prospectively only, otherwise preserving the party's due process protections.<sup>17</sup> If a defendant properly objects to the court's personal jurisdiction and is rebuffed, the defendant may take part in the subsequent litigation without waiving the objection.<sup>18</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Principal of seller of securities voluntarily submitted to personal jurisdiction of Idaho trial court, with respect to civil enforcement claim against seller and principal brought by Department of Finance, alleging they had engaged in securities fraud, even though principal had never traveled to Idaho; through his attorneys of record, principal appeared and answered allegations Department made against him, there was no filing of special appearance to contest jurisdiction, principal's answer to Department's complaint did not assert that trial court lacked personal jurisdiction, and principal also submitted to personal jurisdiction by submitting multiple filings on behalf of seller. *Idaho R. Civ. P. 4.1(b)*, 12(b)(2), 12(h)(1). Department of Finance, Securities Bureau v. Zarinegar, 474 P.3d 683 (Idaho 2020), reh'g dismissed, (Nov. 5, 2020).

Tenant did not waive defense of lack of jurisdiction due to defective service by asserting counterclaims not directly related to petition in holdover proceeding, where landlord asserted claims for apartment, use and occupancy, and attorneys' fees, and tenant asserted aforementioned defense and defenses of lack of good faith, breach of warranty of habitability, and retaliation, and counterclaims for injunction to force repairs to apartment, damages for breach of warranty of habitability, correction of housing code violations, attorneys' fees, and wrongful eviction; counterclaims for injunction and correction were related to defenses such that failure to assert them would risk the issues being precluded in future proceedings by collateral estoppel. *Kuper v. Bravo*, 61 Misc. 3d 274, 82 N.Y.S.3d 805 (N.Y. City Civ. Ct. 2018).

Hotel owner waived any objection to the trial court's exercise of personal jurisdiction over it, in remodeling company's action for breach of contract, claim on unverified account and account stated, and unjust enrichment, where owner calendared a hearing and sought affirmative relief from the trial court on its motions to dismiss for failure to state a claim and for attorney's fees. *N.C. Gen. Stat. Ann. § 6-21.5*; *N.C. R. Civ. P. 12(b)(6)*. *Janu Inc. v. Mega Hospitality, LLC*, 884 S.E.2d 50 (N.C. Ct. App. 2023).

## [END OF SUPPLEMENT]

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### Footnotes

1                   § 71.

2                   § 94.

3                   § 72.

4                   Conn.—*Matthews v. SBA, Inc.*, 149 Conn. App. 513, 89 A.3d 938 (2014), certification denied, 312 Conn. 917, 94 A.3d 642 (2014).

Ga.—*Swafford v. Elkins*, 327 Ga. App. 802, 761 S.E.2d 359 (2014).

Ill.—*BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, 379 Ill. Dec. 85, 6 N.E.3d 162 (Ill. 2014).

Mass.—*American Intern. Ins. Co. v. Robert Seuffer GMBH & Co. KG*, 468 Mass. 109, 9 N.E.3d 289 (2014), cert. denied, 135 S. Ct. 871, 190 L. Ed. 2d 703 (2014).

Mo.—[Schaeffer v. Schaeffer](#), 471 S.W.3d 367 (Mo. Ct. App. S.D. 2015), transfer denied, (Oct. 27, 2015).

N.C.—[Rossi v. Spolaric](#), 781 S.E.2d 648 (N.C. Ct. App. 2016).

Tex.—[In re Fisher](#), 433 S.W.3d 523 (Tex. 2014), as corrected on denial of reh'g, (May 2, 2014).

5 Ga.—[Swafford v. Elkins](#), 327 Ga. App. 802, 761 S.E.2d 359 (2014).

Mo.—[St. John's Clinic, Inc. v. Pulaski County Ambulance Dist.](#), 422 S.W.3d 469 (Mo. Ct. App. S.D. 2014), transfer denied, (Feb. 18, 2014) and transfer denied, (Mar. 25, 2014).

Pa.—[Borough of Gettysburg v. Teamsters Local No. 776](#), 103 A.3d 389 (Pa. Commw. Ct. 2014).

S.C.—[Ex parte Cannon](#), 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009).

6 § 98.

7 Cal.—[City of Riverside v. Horspool](#), 223 Cal. App. 4th 670, 167 Cal. Rptr. 3d 440 (4th Dist. 2014).

Mo.—[St. John's Clinic, Inc. v. Pulaski County Ambulance Dist.](#), 422 S.W.3d 469 (Mo. Ct. App. S.D. 2014), transfer denied, (Feb. 18, 2014) and transfer denied, (Mar. 25, 2014).

N.Y.—[NYRU, Inc. v. Forge Restaurant, LLC](#), 92 A.D.3d 511, 938 N.Y.S.2d 306 (1st Dep't 2012).

N.C.—[Graham County Bd. of Elections v. Graham County Bd. of Com'rs](#), 212 N.C. App. 313, 712 S.E.2d 372 (2011).

8 Mo.—[Schaeffer v. Schaeffer](#), 471 S.W.3d 367 (Mo. Ct. App. S.D. 2015), transfer denied, (Oct. 27, 2015).

N.M.—[Trei v. AMTX Hotel Corp.](#), 2014-NMCA-104, 336 P.3d 393 (N.M. Ct. App. 2014).

9 Mass.—[American Intern. Ins. Co. v. Robert Seuffer GMBH & Co. KG](#), 468 Mass. 109, 9 N.E.3d 289 (2014), cert. denied, 135 S. Ct. 871, 190 L. Ed. 2d 703 (2014).

10 Ariz.—[Desarrollo Inmobiliario y Negocios Industriales De Alta Tecnologia De Hermosillo, S.A. De C.V. v. Kader Holdings Co. Ltd.](#), 229 Ariz. 367, 276 P.3d 1 (Ct. App. Div. 2 2012).

Tex.—[In re Fisher](#), 433 S.W.3d 523 (Tex. 2014), as corrected on denial of reh'g, (May 2, 2014).

11 § 72.

12 § 73.

13 Fla.—[Snider v. Metcalfe](#), 157 So. 3d 422 (Fla. 4th DCA 2015).

Ga.—[Swafford v. Elkins](#), 327 Ga. App. 802, 761 S.E.2d 359 (2014).

N.H.—[Mahindra & Mahindra, Ltd. v. Holloway Motor Cars of Manchester, LLC](#), 166 N.H. 740, 103 A.3d 1170 (2014).

N.D.—[In re G.K.G.](#), 2014 ND 82, 846 N.W.2d 473 (N.D. 2014).

S.D.—[In re M.W.](#), 2010 ND 135, 785 N.W.2d 211 (N.D. 2010).

**Filing a permissive pleading before ruling**

Ariz.—[Desarrollo Inmobiliario y Negocios Industriales De Alta Tecnologia De Hermosillo, S.A. De C.V. v. Kader Holdings Co. Ltd.](#), 229 Ariz. 367, 276 P.3d 1 (Ct. App. Div. 2 2012).

- 14                   Ga.—[Swafford v. Elkins](#), 327 Ga. App. 802, 761 S.E.2d 359 (2014).
- 15                   Ga.—[Swafford v. Elkins](#), 327 Ga. App. 802, 761 S.E.2d 359 (2014).
- Mo.—[Schaeffer v. Schaeffer](#), 471 S.W.3d 367 (Mo. Ct. App. S.D. 2015), transfer denied, (Oct. 27, 2015).
- Ohio—[D'Amore v. Mathews](#), 193 Ohio App. 3d 575, 2011-Ohio-2853, 952 N.E.2d 1212 (12th Dist. Madison County 2011).
- Okla.—[Cherokee Nation v. Nomura](#), 2007 OK 40, 160 P.3d 967 (Okla. 2007).
- Or.—[Department of Human Services v. M.C.-C.](#), 275 Or. App. 121, 365 P.3d 533 (2015), review denied, 358 Or. 611 (2016).
- Tex.—[Trenz v. Peter Paul Petroleum Co.](#), 388 S.W.3d 796 (Tex. App. Houston 1st Dist. 2012).
- 16                   Mo.—[Schaeffer v. Schaeffer](#), 471 S.W.3d 367 (Mo. Ct. App. S.D. 2015), transfer denied, (Oct. 27, 2015).
- 17                   Ill.—[BAC Home Loans Servicing, LP v. Mitchell](#), 2014 IL 116311, 379 Ill. Dec. 85, 6 N.E.3d 162 (Ill. 2014).
- 18                   Mass.—[I.S.H. v. M.D.B.](#), 83 Mass. App. Ct. 553, 987 N.E.2d 223 (2013).

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